IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3583 OF 2006

Shri Balgonda Bandu Bhojkar
and ors. ..Petitioners

Vs.

The State of Maharashtra and ors. ..Respondents

Mr. Tejpal S. Ingale for petitioners.
Mrs.M.P. Thakur, AGP for respondent nos.1 and 4.
Mr. P.P. Chavan with Ms. Kavita Kothavale i/by M/s. Navdeep Vora and Associates for respondent nos.2 and 3.

CORAM: B.H. MARLAPALLE & J. H. BHATIA,JJ.

Date : November 29, 2006.

P.C.:

1. We have heard Mr. Ingale the learned counsel for the petitioners at length. He states that the petitioners have approached the Maharashtra Industrial Development Corporation (respondent nos.2 and 3) from time to time for return or deletion of the land as shown in para 3 of the petition memo, after surrendering a substantial portion of their holdings and the officers of the respondent no.2-corporation in their recommendations dated 27/11/2001 and 19/4/2004 have suggested to return the said land to the

petitioners. It is also stated that in respect of the lands already surrendered, the petitioners have received compensation and in respect of land which is in their possession, they have not accepted the compensation amount. However, the communication dated 19/4/2004 addressed by the Officer at Kolhapur of the respondent no.2-corporation, it is clear that the compensation amount has been worked out for the entire land and for the land which is in the possession of the petitioners, as at present, some of the petitioners have not accepted the compensation amount.

2. The respondents have filed affidavit in reply and supported the decision communicated by the Government of Maharashtra through the Department of Industries, Energy and Labour dated 29/11/2005. It has been pointed out by the respondents that the petitions for similar prayers could not be entertained by this court in the past and more so because of the scheme of the Maharashtra Industrial Development Act, 1961. Section 32 of the said Act provides for compulsory acquisition of the land and subsection (3) therein provides for recording objections etc. of the

persons interested i.e. including the owners or the cultivators, as the case may be and the Government is required to pass such orders either confirming the original notification or modifying the same, which may include deletion of some of the land stated in the notification issued under subsection (1). Proviso below subsection (4) reads as under:-

> " Provided that if before actual possession of such land is taken by or on behalf of the State Government, it appears for the State Government that the land is no more required for the purposes of this Act, the State Government may, by like notice, withdraw the land from acquisition and on the publication of such notice in the Official Gazette, the land shall revest with retrospective effect in the person in whom it was vesting immediately before the publication of the notice under subsection (1), subject to such encumbrances, if any, as may be subsisting at that time. The owner and other persons interested shall be entitled to compensation for the damage, if

any, suffered by them in consequence of the acquisition proceedings as determined in accordance with the provisions of section 33."

. However, once the land is transferred to the Corporation under subsection (7) of Section 32 such a power of deletion of land is not vested with the State Government or with the Corporation, except for the disposal of the land under Section 39. The Maharashtra Industrial Development Act, 1961 does not provide a scheme for return of land on par with the scheme of Section 48 of the Land Acquisition Act, 1894, while the land owners remained in possession even after the award is passed.

3. Mr. Ingale further submitted that in some cases the MIDC has returned the land or excluded from acquisition. The affidavit in reply by one of the petitioners and placed before us does not indicate whether the deletion was before the land was handed over to MIDC or after the land was handed over to MIDC and in any case the State Government has turned down

the request of the petitioners on the ground that under the Maharashtra Industrial Development Act, 1961 there is no such provision for return of the land or for deletion from acquisition after the land has vested with the respondent no.2-corporation.

4. We, therefore, cannot entertain this petition and it is for the MIDC and the State Government to take appropriate decision in respect of the petitioners' land which they claim to be still in possession and cultivation.

5. Petition is, therefore, rejected summarily.

(J.H. Bhatia, J.) **(B.H. Marlapalle,J.)**